

NAR SETTLEMENT FAQs

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Note: New or revised FAQs are noted with the date added or updated.

CHANGES IN RESIDENTIAL REAL ESTATE—QUICKSTART FAQ FOR CONSUMERS

The following questions will help homebuyers and home sellers better understand the recent practice changes in residential real estate and what the changes mean for them. While these are intended to provide an overview, real estate transactions can take many forms. Additional detailed information can be found in subsequent FAQ sections.

Overview

1. In brief, what are the practice changes?

- There are several practice changes following NAR's settlement agreement resolving claims brought by home sellers related to broker compensation.
- Consumers can broadly think about the changes in two categories:
 - First, written buyer agreements are now required and must meet certain criteria. Buyers and their agents will need to reach an agreement regarding how the agent will be compensated for their services and put it in writing prior to touring a home. More details on those agreements are below.
 - Second, offers of compensation (when a seller or a seller's agent shares compensation with a buyer's agent) can no longer be shared on Multiple Listing Services (MLS). MLSs are local marketplaces used by both buyer and seller agents to share information about homes for sale. Offers of compensation are still an option but must be communicated off-MLS if a seller chooses to make an offer available.
- What's important to know is these practice changes provide consumers on both sides of a residential transaction with additional choice and transparency. *(Added 9/5/24)*

2. When did these changes go into effect?

- These changes went into effect on August 17, 2024. *(Added 9/5/24)*

3. Will I save money as a homebuyer or home seller because of these changes?

- Nothing in NAR's policies (including the MLS Model Rule) increased costs for buyers or sellers, as NAR maintained throughout the litigation.
- The practice changes preserve the choices consumers have regarding real estate services and compensation. *(Added 9/5/24)*

For Home Sellers

4. How do the practice changes impact home sellers?

- The practice changes empower consumers with additional choice and transparency when selling a home.
- As a seller, you still have the choice of offering compensation to buyer agents. You may consider doing this as a way of marketing your home or making your listing more attractive to buyers.
- Your agent must clearly disclose to you and obtain your approval for any payment or offer of payment that a listing agent will make to another agent acting for buyers.
- This disclosure must be made to you in writing in advance of any payment or agreement to pay another agent acting for buyers and must specify the payment amount or rate.

- If you choose to approve an offer of compensation, there are changes to how it can be communicated—your agent cannot include it on an MLS.
- Your agent can advertise your listing via off-MLS platforms such as social media, flyers, and websites.
- You as the seller can still offer buyer concessions on an MLS (for example, concessions for buyer closing costs).
- Compensation for your agent remains fully negotiable and is not set by law, and if your agent is a REALTOR®, they must abide by the REALTOR® Code of Ethics and have clear and transparent discussions with you about compensation.
- When finding an agent to work with, ask questions about compensation and understand what services you are receiving.
- Agents who are REALTORS® are here to help you navigate the home selling process and are ethically obligated to work in your best interest. *(Added 9/5/24)*

5. What is the value of an MLS?

- MLSs have always provided significant value beyond communicating offers of compensation.
- MLSs:
 - Enable comprehensive marketplaces: Local agents are incentivized to participate because it allows them to access an inventory of and widely advertise homes for sale.
 - Ensure reliable data access: MLSs are hubs of trusted, verified information where all participants have equitable access.
 - Create connections: Local MLSs create the largest opportunity for connections between real estate agents with properties to sell and those with consumers looking to buy.
 - Advance small business: Compiling housing information that is accessible to all businesses, in one place, allows smaller real estate brokerages to compete with larger ones.
 - Encourage entrepreneurship: Because of lower barriers to entry enabled by local MLSs, new market entrants can advance technology, consumer service, and other innovations. *(Added 9/5/24)*

6. Why would a seller choose to offer compensation to a buyer agent?

- Offers of compensation can benefit both buyers and sellers.
- For many prospective homebuyers, offers of compensation made by sellers help to reduce up-front costs, making professional representation in their home search more accessible.
- This is particularly true for low-income and first-time homebuyers, as well as homebuyers from underserved communities.
- Sellers also reap the benefits, as offers of compensation increase the potential buyer pool for their home and the likelihood that they will receive the best offer available for their property. *(Added 9/5/24)*

7. How will offers of compensation be communicated if agents can't use MLSs? Doesn't this just make agent compensation less transparent?

- Offers of compensation could continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. And sellers can offer buyer concessions on an MLS (for example—concessions that can be used for buyer closing costs).
- The settlement does not change the ethical duties that NAR members owe

- their clients.
- Agents who are REALTORS® still must abide by their duties under the Code of Ethics.
- Agents who are REALTORS® are always required to protect and promote the interests of their clients and treat all parties in a transaction honestly.
- Agents who are REALTORS® will continue to use their skill, care, and diligence to protect the interests of their clients.
- NAR remains dedicated to promoting transparency in the marketplace and working to ensure that consumers have access to comprehensive, equitable, transparent, and reliable property information, as well as the ability to have affordable professional representation in their real estate transactions. *(Added 9/5/24)*

For Homebuyers

8. How do the practice changes impact homebuyers?

- The settlement empowers consumers with additional choice and transparency when buying a home.
- As part of the new practice changes, you will need to sign a written agreement with your agent before touring a home.
- Before signing this agreement, you should ensure it reflects the terms you have negotiated with your agent and that you understand exactly what services and value will be provided, and for how much.
- The buyer agreement must include four components concerning compensation:
 - A specific and conspicuous disclosure of the amount or rate of compensation the agent will receive or how this amount will be determined.
 - Compensation that is objective (e.g., \$0, X flat fee, X percent, X hourly rate)—and not open-ended (e.g., cannot be “buyer broker compensation shall be whatever the amount the seller is offering to the buyer”).
 - A term that prohibits the agent from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer; and,
 - A conspicuous statement that agent fees and commissions are fully negotiable and not set by law.
- Written agreements apply to both in-person and live virtual home tours.
- You do not need a written agreement if you are just speaking to an agent at an open house or asking them about their services.
- The seller may agree to offer compensation to your agent. This practice is permitted but the offer cannot be shared on an MLS.
- You can still accept concessions from the seller, such as offers to pay your closing costs.
- Compensation for your agent remains fully negotiable and is not set by law, and if your agent is a REALTOR®, they must abide by the REALTOR® Code of Ethics and have clear and transparent discussions with you about compensation.
- When finding an agent to work with, ask questions about compensation and understand what services you are receiving.
- Agents who are REALTORS® are here to help you navigate the homebuying process and are ethically obligated to work in your best interest. *(Added 9/5/24)*

9. Does the settlement change access to mortgages for buyers?

- No.

- Under the settlement, buyers still have the same options when it comes to compensating their agents. That is, the listing agent can compensate the buyer agent, the seller can compensate the buyer agent, or the buyer can compensate their agent directly.
- Buyers will still be able to get financing from Fannie Mae, Freddie Mac, and the FHA under these scenarios.
- The FHA confirmed this in a letter after NAR sought to affirm our interpretation of existing guidance.
- Likewise, Fannie Mae and Freddie Mac published explicit confirmations that commissions for buyer agents paid by the seller would not count against the buyer.
- However, none of these agencies will allow the buyer to finance a commission into the mortgage at this time. *(Updated 7/8/24)*

10. What about VA loans and the prohibition on buyers paying commissions directly?

- The Department of Veterans Affairs (VA) recently announced that it has [temporarily lifted](#) its ban on buyers paying for real estate agent representation. Veteran buyers now have more options, ensuring they can have professional access to representation in their home buying process. The VA's policy took effect on August 10, 2024.
- The VA is evaluating the need for a formal rulemaking process on this issue.
- NAR has strongly advocated for this change as we want to ensure veterans maintain access to the VA home loan program, which has been a significant tool in helping service members achieve the American dream of homeownership.
- NAR recently submitted a letter to the VA urging them to make this revision to their policies. *(Updated 7/8/24)*

11. Can real estate commissions be financed?

- No. Financing commissions is not feasible under the current structure of the residential mortgage finance system, and there is no clear short-term legislative or regulatory fix.
- Banks would treat such a loan as a personal loan that would have higher rates and limit access to those loans to borrowers with better credit profiles. That personal loan would add to the buyers' liabilities and make it harder to qualify for the mortgage they are seeking.
- Fannie Mae, Freddie Mac, and the FHA do not allow commissions to be added to the balance of the mortgage.
- Several rules that make up the foundation of mortgage finance would need to be changed by the regulators and Congress to make this change.

12. What is NAR doing to promote access to financing for home buyers?

- NAR is working with our partners in the lending community to gain greater clarity on guidance from the agencies and to maintain the steady flow of funding for closing home purchases.
- NAR also continues to advocate for policies that could benefit potential homebuyers and expand opportunities for Americans to achieve homeownership.

13. Do I have to have an agent to purchase a property?

- As always, the choice of whether to use a real estate professional is up to the buyer.
- However, buying a home is one of the largest financial transactions most people will ever undertake. Agents who are REALTORS® are a trusted source of advice and stand ready to help you navigate your homebuying journey and make the choices that work best for you.

- Agents who are REALTORS® can use their extensive experience to navigate difficult negotiations, write the best offer possible, and help buyers avoid common mistakes—all to ultimately help successfully close a transaction, saving you money and time.
- Agents who are REALTORS® are ethically obligated to work in your best interest and must abide by the REALTOR® Code of Ethics.
- For more information on how a REALTOR® can support your homebuying experience, watch clips from real homebuyers on facts.realtor. *(Added 9/5/24)*

14. Does this mean buyer agents are working for free?

- No. Under the settlement, buyers still have the same options when it comes to compensating their agents. Compensation will continue to be negotiable and should always be negotiated between agents and the consumers they represent.
- The types of compensation available for buyer agents will continue to take multiple forms, including but not limited to:
 - Fixed-fee commission paid directly by consumers
 - Concession from the seller
 - Portion of the listing agent's compensation *(Updated 9/5/24)*

15. How will buyer agents get paid now?

- The types of compensation available for buyer brokers will continue to take multiple forms, depending on broker-consumer negotiations, including but not limited to:
 - Fixed-fee commission paid directly by consumers
 - Concession from the seller
 - Portion of the listing agent's compensation
- Offers of compensation will continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. *(Updated 9/5/24)*

16. Can a buyer request the listing agent pay compensation to the buyer agent?

- Yes.

17. Can buyers and buyer agents rely on an offer of compensation that was on an MLS prior to August 17?

- If the sales contract was executed before the MLS policy change date on August 17, 2024, the buyer agent can rely upon the offer of compensation even if closing occurs after the date of the policy change.
- If a sales contract was not executed before August 17, 2024, the offer on an MLS will not be valid and buyers and buyer agents may wish to protect themselves in writing with the listing agent or seller through a broker agreement or by including the offer of compensation in the sales contract.
- MLSs may have updated their rules prior to August 17, 2024 and the same principles would apply to the relevant date. *(Updated 9/5/24)*

CHANGES IN RESIDENTIAL REAL ESTATE—DETAILED FAQ FOR REAL ESTATE PROFESSIONALS

SETTLEMENT OVERVIEW

Key Settlement Details

18. Why did NAR enter into this settlement?

- From the beginning of this litigation, we had two goals:
 - Secure a release of liability for as many of our members, associations, and MLSs as we could; and
 - Preserve the choices consumers have regarding real estate services and compensation.
- This proposed settlement achieves both of those goals and provides a path for us to move forward and continue our work to preserve, protect, and advance the right to real property for all.

19. What are the key terms of the agreement?

- **Release of liability:** The agreement, if granted final approval by the court, would release NAR, over one million NAR members, all state/territorial and local REALTOR® associations, all REALTOR® MLSs, and all brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2 billion or below from liability for the types of claims brought in these cases on behalf of home sellers related to broker commissions.
 - NAR fought to include all members in the release and was able to ensure more than one million members are included.
 - Despite NAR's efforts, agents affiliated with HomeServices of America and its related companies are not released under NAR's settlement, nor are employees of the remaining corporate defendants named in the cases covered by this settlement. Many defendants have reached separate settlement agreements.
 - The agreement also provided a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion, and MLSs not wholly owned by REALTOR® associations to obtain releases.
 - Individual members and all brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2 billion or below are released by the agreement and not required to opt in.
- **Compensation offers no longer allowed on MLSs:** NAR has agreed to put in place a new rule prohibiting offers of compensation on an MLS. Offers of compensation could continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. And sellers can offer buyer concessions on an MLS (for example—concessions for buyer closing costs). This change went into effect on August 17, 2024.
- **Written agreements for MLS Participants acting for buyers:** While NAR has been advocating for the use of written agreements for years, in this settlement we have agreed to require MLS Participants working with buyers to enter into written agreements with their buyers before touring a home. This change went into effect on August 17, 2024.
- **Settlement payment:** NAR would pay \$418 million over approximately four years. This is a substantial sum, and it will be incumbent on NAR to use our remaining

resources in the most effective way possible to continue delivering on our core mission. NAR will not change membership dues for 2024 or 2025 because of this payment.

- **NAR continues to deny any wrongdoing:** NAR has long maintained—and we continue to believe—that cooperative compensation and NAR’s current policies are good things that benefit buyers and sellers. They promote access to property ownership, particularly for lower- and middle-income buyers who can have a difficult-enough time saving for a down payment. With this settlement, NAR is confident it and its members can still achieve all those goals. *(Updated 9/5/24)*

20. Did NAR admit that plaintiffs’ allegations are true by settling?

- No. The settlement makes clear that NAR continues to deny any wrongdoing in connection with the MLS cooperative compensation model rule (MLS Model Rule).
- It has always been NAR’s goal to resolve this litigation in a way that preserves consumer choice and protects our members to the greatest extent possible. This settlement achieves both of those goals.
- This agreement significantly reduces liability nationwide for over one million NAR members, all state/territorial and local REALTOR® associations, REALTOR® MLSs, and all brokerages with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below. Ultimately, continuing to litigate would have hurt members and their small businesses.
- The agreement provides a path forward for our industry and NAR. *(Updated 9/5/24)*

21. Why was prohibiting the publication of compensation offers on an MLS part of the settlement?

- While NAR has long maintained—and we continue to believe—that cooperative compensation and NAR’s current policies are good things that benefit buyers and sellers, we also acknowledge that continuing to litigate would have hurt members and their small businesses, so have agreed to put in place a new rule prohibiting offers of compensation on an MLS.
- This is consistent with NAR’s long-maintained position that prohibiting all offers of cooperative compensation entirely would harm consumers and be inconsistent with real estate laws in the many states that authorize them.
- We believe this agreement provides a path forward for our industry and NAR

22. What influenced NAR’s decision to choose the legal path it did for the settlement?

- NAR explored settling throughout the litigation and carefully considered all legal options. These included:
 - **Appealing:** A win on appeal would only have addressed the verdict in the Sitzer-Burnett case (not any of the copycat cases) and may only have resulted in a new jury trial, leaving members and consumers with continued uncertainty.
 - **Chapter 11 reorganization:** In theory, Chapter 11 would have enabled NAR to eliminate its own liabilities while pursuing an appeal of the Sitzer-Burnett verdict. But we believe that would have left members with continued uncertainty and potential liability risk. Chapter 11 would also have paused the litigation against NAR but not the other defendants in the cooperative compensation cases.
- Ultimately, while NAR continues to believe that it is not liable for the home seller claims related to broker commissions and that we have strong arguments challenging the Sitzer-Burnett verdict, we decided to reach this settlement to put

claims to rest for over one million NAR members and other parties who would be released under the agreement. *(Updated 8//24)*

23. How quickly do you expect the settlement to be reviewed and/or approved by the court?

- The court granted preliminary approval on April 24, 2024.
- The practice changes set forth in the settlement agreement took effect on August 17, 2024. Class notice was also issued on August 17, 2024.
- The settlement is subject to final court approval. The final approval hearing is scheduled to take place on November 26, 2024.
- There are strong grounds for the court to approve this settlement because it is in the best interests of all parties and class members. *(Updated 9/5/24)*

Who Is Covered

24. How do I know if I'm covered by the settlement?

- If you are an NAR member as of the date of the class notice (August 17, 2024), you are covered by the settlement unless you are an employee of a remaining defendant (at the time of the settlement) in the *Gibson/Umpa* litigations (many of which have announced their own settlements) or you are associated with HomeServices of America or one of its affiliates. HomeServices of America announced its own settlement on April 26, 2024.
- Individual NAR members and their brokerages with 2022 total transaction volume for residential home sales below \$2 billion do not need to take any action to be covered by the settlement. *(Updated 9/5/24)*

25. Will I be covered by the settlement if I became a member shortly before the date of class notice? What if I dropped my membership shortly before the date of class notice?

- To be covered by the settlement, you must be an NAR member as of the date of class notice (August 17, 2024).
- You will not be covered by the settlement—regardless of prior membership length—if you resign your membership, if your membership is terminated, or if your membership becomes inactive prior to the date of class notice. *(Updated 9/5/24)*

26. Brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2+ billion are not covered by the release. What about members affiliated with those brokerages?

- Except for members affiliated with HomeServices of America and employees of the remaining corporate defendants named in the cases covered by this settlement, members affiliated with brokerages with an NAR member as principal whose transaction volume in 2022 was \$2+ billion are covered by the release.
- Individual members and all brokerages with an NAR member as principal with a residential transaction volume in 2022 of \$2 billion or below are released from liability in the proposed settlement agreement. No further affirmative steps are required.

27. How does the settlement affect corporate brokerages and any brokerages that are carved out from the release?

- The agreement provided a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion, and MLSs not wholly owned by REALTOR® associations to obtain releases efficiently if they choose to use it.
- While we would have preferred to protect all industry players, ultimately NAR could not persuade the plaintiffs to include the largest brokerages, particularly given the significant settlements that other corporate defendants have already reached.
- Individual members and all brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2 billion or below are released from liability in the proposed settlement agreement. No further affirmative steps were required.

28. Why does the release of liability carve out some co-defendants and some of their affiliated agents?

- NAR fought to include all members in the release and was able to ensure more than one million members were included.
- Despite NAR's efforts, agents affiliated with HomeServices of America and its related companies are not released under the settlement, nor are employees of other corporate defendants named in the cases covered by this settlement (many of which have announced their own settlements). HomeServices of America announced its own settlement on April 26, 2024.
- Plaintiffs would not agree to include these members and employees of the corporate defendants in the NAR's release.
- NAR secured in the agreement a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion, and MLSs not wholly owned by REALTOR® associations to obtain releases efficiently if they chose to use it. *(Updated 9/5/24)*

29. How does the settlement affect state/territorial and local associations?

- State/territorial and local associations did not need to opt-in to the settlement agreement. The agreement, if granted final approval, would release all state/territorial and local REALTOR® associations from liability for the types of claims brought in these cases on behalf of home sellers related to broker commissions.
- State/territorial and local associations are required to comply with the practice changes agreed to in the settlement. *(Updated 9/5/24)*

30. Are institutes, societies, and councils affiliated with NAR included in the release in the settlement agreement?

- Yes.

31. Does the fact that the release does not cover everybody mean that NAR has left large corporate brokerages and affiliated agents to fend for themselves?

- Absolutely not. NAR fought to include as many people and companies in the release as possible and achieved a release for everyone it could. Over one million members are covered, as are tens of thousands of REALTOR® businesses.
- However, plaintiffs would not agree to include everyone.
- Our options included reaching a settlement or continuing to appeal the Sitzer-Burnett verdict and litigate the related cases. The latter could have led to our filing for Chapter 11 protection, leaving all members, associations, MLSs, and brokerages exposed.
- The scope of the release makes clear that NAR looked out for its members.

- Those that are not released—the largest companies in our industry—were provided a mechanism to opt-in. Additionally, agents at brokerages that are not covered are among the more than one million members released as individuals. *(Updated 9/5/24)*

32. What is required for brokerages with residential transaction volume in 2022 that exceeded \$2 billion to obtain releases?

- Brokerages with residential transaction volume in excess of \$2 billion are required to:
 - Have a Member as Principal on the Class Notice Date (August 17, 2024);
 - Have a Principal who was a Participant in any MLS at any time during the time period covered by the Settlement Class;
 - Have opted-in to the proposed Settlement Agreement by June 18, 2024 (and comply with the terms of the relevant opt-in agreement);
 - Comply with the relevant practice changes for five (5) years after the final judgment approving the proposed Settlement Agreement and the time for appeal of such judgment has run; and
 - Do not assert any claims against NAR, Member Boards, or REALTOR® MLSs based on any of the practice changes or on facts underlying the broker commission litigation or for seven (7) years after the Class Notice Date.
- You should consult the [Settlement Agreement](#) for the controlling text of the requirements and consult your legal counsel with questions. *(Updated 9/5/24)*

33. What is required for non-REALTOR® MLSs to obtain releases?

- Non-REALTOR® MLSs are required to:
 - Have opted-in to the proposed Settlement Agreement by June 18, 2024 (and comply with the terms of the relevant opt-in agreement);
 - Implement the relevant practice changes beginning no later than thirty (30) days after the Class Notice Date (August 17, 2024); and
 - Not assert any claims against NAR, Member Boards, or REALTOR® MLSs based on any of the practice changes or on facts underlying the broker commission litigation or for seven (7) years after the Class Notice Date.
- You should consult the [Settlement Agreement](#) for the controlling text of the requirements and consult your legal counsel with questions. *(Updated 9/5/24)*

34. What is required for REALTOR® MLSs to obtain releases?

- REALTOR® MLSs are required to:
 - Have opted-in to the proposed Settlement Agreement by June 18, 2024 (and comply with the terms of the relevant opt-in agreement);
 - Implement the relevant practice changes for seven (7) years after the Class Notice Date (August 17, 2024); and
 - Not assert any claims against NAR, Member Boards, or REALTOR® MLSs based on any of the practice changes or on facts underlying the broker commission litigation or for seven (7) years after the Class Notice Date.
- You should consult the [Settlement Agreement](#) for the controlling text of the requirements and consult your legal counsel with questions. *(Updated 9/5/24)*

35. What happens if a non-REALTOR® MLS didn't opt-in to the proposed settlement agreement?

- An MLS that did not opt-in would not be covered by the release of the proposed settlement agreement. *(Updated 9/5/24)*

Class Notice

36. What is class notice?

- Class notice is a court-approved process through which members of the "Settlement Class"—home sellers who sold a home on an MLS anywhere in the U.S. during the eligible date ranges and paid a commission to a real estate brokerage in connection with the sale of the home—will be informed about NAR's proposed settlement of the Sitzler-Burnett case.
- Notices are distributed by mail and electronically. This began on August 17, 2024.
- Class notice informs class members of their rights, options, and deadlines to exercise those rights and options under the proposed settlement. Watch NAR's video on what class notice means for REALTORS® here.
- Consumers in your area may have already received a notice regarding separate settlements made by certain brokerage firms; however, this notice will be new and address NAR's settlement. *(Added 9/5/24)*

37. Does NAR run the class notice process?

- It is important to underscore that NAR does not manage the class notice process and that the class notice process has been approved by the Court overseeing the settlement.
- NAR members may nonetheless receive questions from consumers. NAR members should direct consumers to the settlement website (www.RealEstateCommissionLitigation.com) where they can find relevant information. You may also direct them to call the settlement administrator at 888-995-0207, for additional guidance. NAR members should refrain from further advising consumers on class notice. *(Added 9/5/24)*

38. Where can I send consumers for more information?

- NAR members should direct consumers to the settlement website (www.RealEstateCommissionLitigation.com) where they can find relevant information. You may also direct them to call the settlement administrator at 888-995-0207, for additional guidance. *(Added 9/5/24)*

Practice Changes & MLS Information

39. What MLS policies have changed?

- The policy changes, agreed to by NAR leadership, were reviewed and updated with the changes as outlined below:
 - Eliminate and prohibit any requirement of offers of compensation on an MLS between listing brokers or sellers to buyer brokers or other buyer representatives.
 - Retain, and define, "cooperation" for MLS Participation.
 - Eliminate and prohibit MLS Participants, Subscribers, and sellers from making any offers of compensation on an MLS to buyer brokers or other buyer representatives.
 - Require an MLS to eliminate all broker compensation fields and compensation information on an MLS.

- Require an MLS to not create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregator's website for such purpose) for Participants, Subscribers, or sellers to make offers of compensation to buyer brokers or other buyer representatives.
- Prohibit the use of MLS data or data feeds to directly or indirectly establish or maintain a platform of offers of compensation from multiple brokers or other buyer representatives. Such use must result with an MLS terminating the Participant's access to any MLS data and data feeds.
- Reinforce that MLS Participants and Subscribers must not, and MLSs must not enable the ability to filter out or restrict MLS listings that are communicated to customers or clients based on the existence or level of compensation offered to the cooperating broker or the name of a brokerage or agent.
- Require compensation disclosures to sellers, and prospective sellers and buyers.
- Require MLS Participants working with a buyer to enter into a written agreement with the buyer prior to touring a home.

40. How has the definition of an MLS Participant been changed?

- The definition has been amended to remove any references to offers of compensation and to establish that a Participant has the duty to cooperate, which is to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interest of their clients.

41. Are all other MLS policies that were not amended still in effect?

- Yes, all MLS policies will continue to be in effect and subject to enforcement by their local MLSs.

Effective Date

42. The opt-in agreements in the appendices indicate that MLSs that opt in to the NAR settlement have until September 16, 2024, to implement changes. Why did NAR communicate August 17, 2024?

- MLSs that opted into the settlement agreement have until September 16, 2024, to implement the necessary policy changes to be considered Released Parties under the settlement. However, in accordance with mandatory NAR policy, REALTOR® MLSs must implement the practice changes by August 17, 2024. If they do not, they will not be in compliance with NAR mandatory policy.
- NAR recommended all MLSs opting into the settlement implement the practice changes by August 17, 2024. NAR's accelerated rule change process, during which it released the exact language of the practice changes in early May, gave MLSs over three months to implement the changes. *(Updated 9/5/24)*

43. Why is NAR putting the practice changes in place prior to receiving final approval?

- Our settlement requires NAR to implement the practice changes no later than the date of the class notice, which was issued on August 17, 2024. *(Updated 9/5/24)*

REPRESENTING SELLERS

Offers Of Compensation

44. What should listing brokers advise their clients about the prohibition of offers of compensation on an MLS?

- Listing brokers should inform their clients that offers of compensation will no longer be an option on an MLS.
- This change will not prevent offers of cooperative compensation off-MLS. And it will not prevent sellers from offering buyer concessions on an MLS (ex. concessions for buyer closing costs).
- Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they serve.

45. Won't prohibiting offers of compensation on an MLS raise fair housing issues?

- This settlement allows compensation to remain a choice for consumers when buying or selling a home.
- NAR continues to believe that offers of compensation help make professional representation more accessible, decrease costs for home buyers to secure these services, increase fair housing opportunities, and increase the potential buyer pool for sellers.
- The settlement does not change the ethical duties that NAR members owe their clients.
- REALTORS® are always required to protect and promote the interests of their clients and treat all parties in a transaction honestly (Article 1, COE).
- NAR members will continue to use their skill, care, and diligence to protect the interests of their clients. *(Added 9/5/24)*

46. Does this prohibition affect the compensation amount paid to the listing broker?

- No. Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they represent, as NAR's policy has required for decades.

47. Are non-REALTOR® MLSs affected by the prohibition of publishing compensation offers on an MLS?

- Only if they choose to opt into the proposed settlement. *(Updated 9/5/24)*

48. If a member is a Participant or Subscriber of an MLS that hasn't opted-in to the proposed settlement agreement and allows offers of compensation on the MLS, can the member make an offer of compensation on that MLS?

- The practice changes only apply to MLSs that opted into the settlement.
- NAR secured a mechanism for non-REALTOR® association owned MLSs to opt-in and be covered by the proposed settlement agreement. Those MLSs who opted-in by the June 18 deadline must comply with the practice changes, which includes prohibiting offers of compensation in their MLS, to be covered by the release in the settlement. No MLS was required to opt-in to the settlement agreement.
- MLSs that did not opt-in are neither subject to the practice changes nor NAR's policies, and some may allow offers of compensation. The settlement agreement does not prohibit a member from participating in an MLS that did not opt in and that continues to allow offers of compensation. REALTORS® who make offers of compensation on a platform with multiple brokers should assess the risk of potential future liability and consult their local counsel.

- Regardless of whether the MLS opted into the proposed settlement, REALTORS® and REALTOR® MLS Participants and subscribers must not filter out or restrict MLS listings communicated to their customers or clients based on the existence or level of compensation offered to the buyer broker or other buyer representative assisting the buyer.
- The settlement also requires all REALTORS® acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that a listing broker will make to another broker, agent, or other representative acting for buyers. All REALTORS® and MLS Participants working with sellers must also disclose in conspicuous language that broker commissions are not set by law and are fully negotiable. *(Updated 9/5/24)*

49. If the seller or the listing broker offers a bonus or financial incentive in addition to the offer of broker compensation, can the buyer broker accept the extra compensation?

- The buyer broker may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.

50. Does Standard of Practice 16-16 prohibit the negotiation of buyer broker compensation in a buyer's purchase offer?

- No. A buyer can always ask their buyer broker to make it a term of an offer to purchase that the seller pay certain compensation to the buyer broker.
- Standard of Practice 16-16 prohibits a REALTOR® from attempting to modify the terms of a listing agreement through the terms of an offer because the listing agreement is a contractual matter between the seller and the listing broker. However, the seller and the listing broker may independently choose to amend the listing agreement or take any other action they deem appropriate based on the seller's negotiations with the buyer. Standard of Practice 16-16 also prohibits a REALTOR® from delaying or withholding delivery of a buyer's offer while attempting to negotiate a buyer broker compensation.

51. What is NAR's position on making offers of compensation off-MLS?

- NAR has long maintained—and we continue to believe—that offers of compensation benefit buyers and sellers.
- They promote access to real property ownership, particularly for lower- and middle-income buyers who can have a difficult-enough time saving for a down payment.
- With this settlement, NAR is confident it and its members can still achieve all those goals.
- The settlement makes clear that NAR continues to deny any wrongdoing in connection with the MLS cooperative compensation model rule (MLS Model Rule). *(Updated 9/5/24)*

52. Can an MLS have a Yes/No Compensation Field?

- No. The new MLS policies prohibit any information about compensation on an MLS.

53. Can a listing broker communicate offers of compensation on a broker website which has an IDX or VOW feed?

- Yes, MLS Participants may augment MLS data or data feeds with offers of compensation to buyer brokers or other buyer representatives for only listings of their own brokerage.

54. Can an MLS Participant use or share their MLS data or data feeds to establish or maintain a platform for offers of compensation from multiple brokers and buyer brokers or other buyer representatives?

- No, use of MLS data or data feeds to directly or indirectly establish or maintain a platform of offers of compensation from multiple brokers to buyer brokers or other buyer representatives is prohibited and will result in the MLS terminating that Participant's access to any MLS data and data feeds.

55. Can an MLS allow MLS listings to link to a listing broker's contact information (e.g., telephone number, broker's preferred communication method)?

- Yes, an MLS may provide links or other information that allows brokers to contact each other. However, this may not be used to circumvent the prohibitions of (a) making offers of compensation on an MLS to cooperating brokers or other buyer representatives (either directly or through buyers) or (b) disclosing on an MLS broker compensation or total brokerage compensation (i.e., the combined compensation to both listing brokers and cooperating brokers).
- For example, an MLS may not allow MLS listings to have an embedded link to a website which, with a single click on the MLS listing, would immediately display an offer of compensation. *(Updated 7/31/24)*

56. Can disputes about an offer of compensation still be arbitrated or mediated?

- Yes, REALTORS® are bound to arbitrate or mediate pursuant to Article 17 of the Code of Ethics, and for MLS Participants who are non-REALTORS® they are bound to arbitrate or mediate pursuant to their MLS's local rules.

57. Does the prohibition of offers of compensation on the MLS mean that procuring cause will no longer be relevant to arbitration panels determining arbitration awards pursuant to Article 17 of the Code of Ethics or local MLS rules?

- Procuring cause is a legal concept which exists in many states and long predates NAR and the Code of Ethics. While the number of cases with procuring cause at issue may decrease once offers of compensation are prohibited from the MLS, it will remain relevant.
- After the practice changes take effect, offers of compensation may be communicated off-MLS, and buyer brokers may wish to protect themselves through an agreement with the listing broker or by including compensation in the sales contract. However, procuring cause may still be relevant to an arbitration award determination for contractual disputes.
- For example, a buyer could enter into nonexclusive written agreements with multiple buyer brokerages, with each buyer brokerage confirming a compensation offer in writing from the listing broker or seller. In the event of a compensation dispute, an arbitration panel would be tasked with determining which buyer brokerage was the procuring cause and therefore entitled to the compensation. *(Added 7/31/24)*

58. How does the REALTOR® Code of Ethics apply to offers of compensation off MLSs?

- Offers of compensation may continue to be made off MLSs, in consultation between the real estate professional and the seller. With respect to offers of compensation, REALTORS® must continue to be guided by their ethical duties under the REALTOR® Code of Ethics, including that:
- REALTORS® must always:
 - Article 1 – Protect and promote their client's interests

- Article 3 – Ascertain compensation
- Article 9 – Assure all real estate transaction agreements are in writing in clear and understandable language
- Article 10 – provide equal professional services and comply with fair housing laws
- Article 12 – Be honest and truthful in communications
- As a reminder, pursuant to both Article 17 of the REALTOR® Code of Ethics and MLS policy, members are required to mediate (if their Board requires its members to mediate) and arbitrate contractual and compensation disputes.
- These ethical rules continue to apply after, and are not changed by, the MLS practice changes required by the proposed class action settlement. *(Updated 9/5/24)*

Written Listing Agreements

59. What additional provisions must be included in written listing agreements because of the practice changes?

- All REALTORS® and MLS Participants working with sellers must disclose in conspicuous language that broker commissions are not set by law and are fully negotiable.
- All REALTORS® and MLS Participants must include the disclosure in the listing agreement, if the listing agreement is not a government-specified form. If the listing agreement is a government-specified form, a separate disclosure would satisfy the requirement. *(Updated 9/5/24)*

60. Must a REALTOR® or MLS Participant acting for a seller obtain prior approval from the seller before an offer of compensation is made or compensation is paid to another broker, agent, or other representative acting for a buyer?

- Yes. The practice changes require that REALTORS® and MLS Participant acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that a listing broker will make to another broker, agent, or other representative acting for buyers.
- The disclosure must be made to the seller in writing in advance of any payment or agreement to pay another broker, agent, or other representative acting for buyers and must specify the amount or rate of such payment. *(Updated 9/5/24)*

61. Should active listing or buyer agreements—meaning there is no accepted offer—entered into before the MLS policy changes went into effect on August 17, 2024, be amended to include a conspicuous disclosure that compensation is not set by law and is fully negotiable?

- All REALTORS® and MLS Participants must make this disclosure. Agreements active as of August 17, 2024, can either be amended or a separate disclosure can be provided to satisfy the requirement. *(Updated 9/5/24)*

62. Should active listing agreements entered into before the MLS policy changes went into effect on August 17, 2024, be amended to address the settlement agreement’s prohibition on offers of compensation being communicated on an MLS?

- If the listing agreement instructs the listing broker to make an offer of compensation without reference to an MLS, no change to the listing agreement is needed, as the listing broker can comply with that instruction without violating the MLS policy change.

- But if the listing agreement specifies that offers of compensation be made on an MLS then the listing broker should work with the seller to amend the listing agreement before the MLS policy change is implemented, to make it clear the listing broker will not make an offer of compensation on an MLS and to determine whether the seller instructs the listing broker to make an offer of compensation outside of an MLS. *(Updated 9/5/24)*

63. Which pre-closing disclosure forms must include a conspicuous disclosures about the negotiability of commissions?

- In addition to including the disclosure in the listing agreement and written buyer agreement, any pre-closing disclosure form that pertains to broker representation services must include (or, if the form is government-specified, be accompanied by) a conspicuous statement that broker commissions are not set by law and are fully negotiable. For example, a dual agency, subagency or designated agency disclosure form would need to include the required disclosure regarding the negotiability of commission. *(Added 8/6/24)*

Concessions

64. Is there an NAR MLS policy about seller concessions?

- No, MLSs will continue to have local discretion on seller concessions. This includes determining what local rules to have about seller concessions, except under the settlement an MLS must ensure that the seller concessions are not limited to or conditioned upon the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

65. Can an MLS have a Yes/No seller concession field that indicates whether a seller is offering any concession?

- Yes, it is a matter of local discretion which may depend on an MLS's technological capabilities and what an MLS deems to be in the interests of its market.

66. Is an MLS required to have a seller concession field?

- No, it is a matter of local discretion for each MLS.

67. If my MLS removes the compensation field, can I choose to publish my cooperative commission offer in the agent remarks?

- No. The new rule would prohibit offers of compensation on an MLS.

68. Can MLSs allow decimal points to be used for seller concessions?

- Yes, it is a matter of local discretion which may depend on an MLS's technological capabilities and what an MLS deems to be in the interests of its market.

69. Will seller concessions communicated on an MLS be binding on the seller?

- As a general matter, seller concessions usually aren't binding until they are established in an executed contract such as a listing agreement or a purchase contract.

70. Can the seller concession be a total sum or the percentage of the purchase price?

- This is a matter of local discretion. But an MLS must ensure that the seller concessions are not limited to or conditioned upon the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

REPRESENTING BUYERS

Written Buyer Agreements

71. Do the written buyer agreement requirements apply to MLS Subscribers?

- Yes, Subscribers must comply with all MLS rules and regulations, and Participants must ensure their compliance or they would be subject to the MLSs local enforcement and disciplinary action. *(Added 8/6/24)*

72. Who will be responsible for enforcing the written agreements and ensuring all parties follow this new practice change?

- MLSs will be responsible for enforcing the rule regarding written agreements, like MLSs enforce other existing rules.

73. The practice change requiring written agreements with buyers is triggered by two conditions: it only applies to MLS Participants “working with” buyers and is triggered by “touring a home.” What does it mean to be “working with” a buyer?

- The “working with” language is intended to distinguish MLS Participants who provide full or limited brokerage representation or services for the buyer (including transaction brokerage)—such as identifying potential properties, arranging for the buyer to tour a property, performing or facilitating negotiations on behalf of the buyer, presenting offers by the buyer, or other services for the buyer—from MLS Participants who simply market their services or just talk to a buyer—like at an open house or by providing an unrepresented buyer access to a house they have listed.
- If the MLS Participant is working only as an agent or subagent of the seller, then the Participant is not “working with the buyer.” In that scenario, an agreement is not required because the participant is performing work for the seller and not the buyer.
- Authorized dual agents, on the other hand, work with the buyer (and the seller).
- A written buyer agreement is required prior to a buyer “touring a home.” An MLS Participant “working with” a buyer can enter into the written buyer agreement at any point but must do so by no later than prior to the buyer “touring a home,” unless state law requires a written buyer agreement earlier in time (See FAQ “What does it mean to tour a home?”). *(Updated 8/6/24)*

74. What does it mean to tour a home?

- Written buyer agreements are required before a buyer tours a home.
- Touring a home means when the buyer and/or the MLS Participant, or other agent, at the direction of the MLS Participant working with the buyer, enter the house. This includes when the MLS Participant or other agent, at the direction of the MLS Participant, working with the buyer enters the home to provide a live, virtual tour to a buyer not physically present.
- A “home” means a residential property consisting of not less than one nor more than four residential dwelling units.

75. Does the requirement for a written agreement with buyers mean that MLS Participants and buyers must enter into a written agency agreement?

- No. MLS Participants and buyers will still be able to enter into any type of professional relationship permitted by state law.
- NAR policy does not dictate:
 - What type of relationship the professional has with the potential buyer (e.g., agency, non-agency, subagency, transactional, customer).
 - The term of the agreement (e.g., one day, one month, one house, one zip code).
 - The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
 - The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate).

76. What does it mean to be “inconsistent with state or federal law or regulation”?

- All MLS Participants working with a buyer must have a buyer written agreement prior to touring, unless state law requires an agreement earlier in time.

77. If an MLS Participant hosts an open house or provides access to a property, on behalf of the seller only, to an unrepresented buyer, will they be required to enter into a written agreement with those buyers touring the home?

- No. In this case, since the MLS Participant is only working for the seller, and not the buyer, the MLS Participant does not need to enter into a written agreement with the buyer.

78. Are written buyer agreements required when listing agents talk with a buyer on behalf of a seller only or as subagents of the seller?

- No. An agreement is not required because the participant is performing work for the seller and not the buyer.

79. Are written buyer agreements required when MLS Participants perform ministerial acts?

- Yes. The obligation to enter into a written buyer agreement is triggered just prior to an MLS Participant taking a buyer to tour a home, regardless of what other acts the MLS Participant performs for the buyer.
- An MLS Participant performing only ministerial acts—and who has not taken the buyer to tour a home—is not working with the buyer and therefore does not yet need to enter into a written buyer agreement. *(Updated 7/23/24)*

80. If an MLS Participant enters into a non-agency relationship with a buyer, is a buyer written agreement still necessary?

- Yes, regardless of whether it is an agency or non-agency relationship, the obligation is triggered once the MLS Participant works with and takes that buyer to tour a home.

81. Are written buyer agreements required in a dual agency scenario when a single agent works both for the seller and for the buyer?

- Yes. If an MLS Participant is working as an agent for a buyer, a written agreement is required.

82. Are written buyer agreements required in a designated agency scenario, when a single broker works both for the seller and for the buyer, and designates an agent to represent the buyer?

- Yes. If an MLS Participant is working as an agent for a buyer, a written agreement is required.

83. Do the written buyer agreement requirements change my state's disclosure requirements to an unrepresented buyer?

- No, you must still comply with all your state and local legal requirements. MLS policies and rules are subject to state and local laws and regulations.

84. How will state laws affect the implementation of the practice change requiring written agreements with buyers?

- Written buyer agreements will be required of all MLS Participants working with buyers prior to touring a home, unless state law requires a written buyer agreement earlier in time.

85. Will MLSs be required to get a copy of buyer written agreements?

- No, an MLS is not required to receive a copy but can request it as a matter of their local enforcement.

86. MLS Participants may not receive compensation for services from any source that exceeds the amount or rate agreed to in the buyer agreement. Does this mean that brokerages can only have one agreement with the buyer?

- No. The practice change empowers buyers and brokers to negotiate and agree to services and compensation that work for them. MLS Participants should work with consumers to ensure they fully understand the options available. Compensation continues to be negotiable and should always be negotiated between MLS Participants and the buyers with whom they work.
- At times, a new or amended buyer agreement may be appropriate, and the buyer and broker may agree to amended terms. However, amended agreements must also meet the requirements of the practice changes. The practice changes must be implemented fully and in good faith in the service of promoting consumer empowerment, choice, and healthy competition.
- NAR policy does not dictate:
 - What type of relationship the professional has with the potential buyer (e.g., agency, non-agency, subagency, transactional, customer).
 - The term of the agreement (e.g., one day, one month, one house, one zip code).
 - The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
 - The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate).
(Updated 7/31/24)

87. In the buyer agreement, can buyers and buyer brokers agree to a range of compensation?

- No. Under the settlement, any compensation agreed to in the written buyer agreement must be objectively ascertainable and not open-ended.
- For example, a written buyer agreement cannot have a commission that is "buyer broker compensation shall be whatever amount the seller is offering to the buyer" or "between X and Y percent."

- Importantly, NAR policy will not dictate the amount of compensation agreed between buyers and buyer brokers (e.g., \$0, X flat fee, X percent, X hourly rate). (Updated 7/15/24)

88. Should active buyer agreements entered into before the MLS policy change be amended to make sure any compensation is not open-ended and is objectively ascertainable?

- Yes. MLS Participants working with a buyer after the effective date of the policy should take steps to ensure that the buyer has agreed to the necessary terms required by the settlement agreement.

89. Should active buyer agreements entered into before the MLS policy change be amended to remove any provision that authorizes the buyer broker to keep any offers of compensation exceeding the amount of compensation agreed with the buyer?

- Yes. MLS Participants working with a buyer after the effective date of the policy should take steps to ensure that the buyer has agreed to the necessary terms required by the settlement agreement.

90. Does the settlement agreement's requirement of "objectively ascertainable" and "not open-ended" apply to listing agreements or the compensation sellers pay listing brokers?

- No. Unlike the settlement agreement's requirements that compensation in buyer agreements be objectively ascertainable and not open-ended, listing agreements can be structured however the seller and listing broker agree, so long as the listing agreement complies with the law, pre-existing MLS policy, and "specifies the amount or rate of any payment" from the seller to the listing broker.

91. Which pre-closing disclosure forms must include a conspicuous disclosures about the negotiability of commissions?

- In addition to including the disclosure in the listing agreement and written buyer agreement, any pre-closing disclosure form that pertains to broker representation services must include (or, if the form is government-specified, be accompanied by) a conspicuous statement that broker commissions are not set by law and are fully negotiable. For example, a dual agency, subagency or designated agency disclosure form would need to include the required disclosure regarding the negotiability of commission. (Added 8/6/24)

Anti-Steering

92. What is NAR's policy on steering buyers based on the amount of broker compensation?

- Under NAR's Code of Ethics, steering buyers based on the amount of broker compensation is prohibited.
- REALTORS® MUST pledge themselves to protect and promote the interests of their client, putting their client's best interests before their own. A REALTOR® must never put broker compensation before their client's interests.
- REALTORS® MUST be honest and truthful in their real estate communications and MUST NOT exaggerate, misrepresent, or conceal pertinent facts relating to the transaction, including facts about broker commissions.

- If a REALTOR® does anything to put their own (or another broker's) compensation before her client's interests, they are violating this primary code of ethics and potentially violating the broker's fiduciary duties to their client (depending on the broker-buyer relationship and state law). *(Added 5/29/24)*

93. Does NAR's settlement address the theoretical possibility of steering?

- Yes. In the agreement, NAR reaffirms its commitment to requiring that MLS Participants must not limit the listings their client sees because of broker compensation.
- Written buyer agreements, required by the NAR practice changes that will be implemented on August 17, 2024, will also outline that MLS Participants may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.
- Since a broker working with a buyer cannot receive more compensation than the buyer has agreed to in that agreement, the amount of any offer of compensation is irrelevant to the buyer-broker's compensation.
- Under these practice changes, NAR has eliminated any theoretical steering because a broker will not make more compensation by steering a buyer to a particular listing because it has a "higher" offer of compensation. *(Added 5/29/24)*

94. Can a broker tell a potential buyer the amount of broker commissions and explain who is paying those commissions?

- Yes. In fact, REALTORS® must provide this information to potential buyers under NAR's Code of Ethics.
- The NAR Settlement also requires that "to the extent that such a REALTOR® or Participant will receive compensation from any source, the agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined." *(Added 5/29/24)*

95. Can a listing broker explain to a seller that the buyer will know who is paying the commissions?

- Yes, Articles 2 and 12 of NAR's Code of Ethics apply equally to brokers working with sellers.
- The listing broker should explain to her client the benefits and costs of the various types of marketing that can be done for a listing, and how potential buyers might respond to such marketing—including any buyer costs that the listing broker or seller may offer to pay.
- A listing broker should inform the seller about costs the buyer will incur, how the buyer might react to those costs, and how the seller can market a house considering the buyer's costs; but a listing broker must not tell a seller that a broker will steer buyers based on the amount that broker is compensated. *(Added 5/29/24)*

96. Appraisers often use MLS data as an accurate source of information for appraisal reports. How are the practice changes going to impact the appraisal process?

- Appraisers need to know the details of the transactions they are analyzing, including the sales they consider as possible comparables.
- Compensation paid on the subject property will remain readily available to the appraiser through analysis of the sales contract.
- It is imperative that NAR members facilitate open lines of communication with appraisers. This includes answering and engaging their inquiries on what

compensation was paid or will be paid at closing for a given transaction. (Added 7/31/24)

Non-Filtering of Listings

97. Didn't the NAR MLS policies already include a policy about the non-filtering of MLS listings based on compensation?

- Yes, Policy Statement 8.5 was enacted in 2021. It has only been amended for clarification purposes and to ensure consistency with the proposed settlement agreement.

98. What does it mean to "filter-out" a listing?

- Filtering out listings means to remove listings or block MLS listings from being communicated to customers or clients based on the amount of compensation offered, the existence of an offer of compensation, or based on the listing firm or listing agent.
- Participants have the duty to cooperate which is to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interest of their clients.

99. Is "ranking" or "sorting" different from "filtering out" listings?

- Yes, "ranking" or "sorting" listings is the ability to organize a list of MLS listings in a particular order. Examples of criteria that may be used to rank or sort may be the property sales price, the number of bathrooms or bedrooms, the property location, etc. Ranking or sorting must not involve the removal or the blocking of MLS listings which prevent the communication of those listings to a client or customer.

100. Can an MLS have a function within its system that automatically pushes out emails to clients about available properties hitting the market and allows Participants or Subscribers to filter out listings based on the offer of compensation, listing firm or the listing agent?

- Since offers of compensation may no longer be communicated on an MLS, it should not have any functionality related to broker compensation.
- As for filtering based on listing firm or listing agent, just like the inability of Participants or Subscribers to withhold listings based on those criteria in IDX and VOW displays, MLSs cannot enable that same ability within other MLS functions that provide listing data to consumers.
- An MLS must take appropriate action if it becomes aware that a Participant or Subscriber acts inconsistently with this MLS policy.

ADDITIONAL SETTLEMENT DETAILS

Transaction Brokerage

These questions are intended to address how the practice changes impact transaction brokerage. Please review all FAQs for how the practice changes impact your specific circumstances.

101. Do transaction brokers have to obtain prior approval from a seller before an offer of compensation is made or paid to another broker, agent, or other representative acting for a buyer?

- Yes. A transaction broker who provides brokerage representation or brokerage services to a seller must conspicuously disclose to the seller and obtain seller’s approval for any payment or offer of payment that a listing broker or seller will make to another broker, agent, or other representative acting for buyers.
- The disclosure must be made to the seller in writing in advance of any payment or agreement to pay another broker acting for buyers and specify the amount or rate of any such payment. *(Added 8/8/24)*

102. Does the written buyer agreement requirement apply to transaction brokers?

- Yes. A transaction broker must have a written buyer agreement when they work with a buyer. The “working with” language is intended to distinguish MLS Participants who provide brokerage representation or services for the buyer —such as identifying potential properties, arranging for the buyer to tour a property, performing or facilitating negotiations on behalf of the buyer, presenting offers by the buyer, or other services for the buyer—from MLS Participants who simply market their services or just talk to a buyer—like at an open house or by providing an unrepresented buyer access to a house they have listed.
- A written buyer agreement is required prior to a buyer “touring a home.” An MLS Participant “working with” a buyer can enter into the written buyer agreement at any point but must do so by no later than prior to the buyer “touring a home,” unless state law requires a written buyer agreement earlier in time (See FAQ “What does it mean to tour a home?”). *(Added 8/8/24)*

103. Is a transaction broker who facilitates a transaction for a buyer considered to be “working with” a buyer?

- Yes. *(Added 8/8/24)*

104. Is a written buyer agreement required if a transaction broker, who is facilitating a transaction for a seller, provides an unrepresented buyer with access to a home?

- No. The transaction broker would not be considered working with a buyer in that situation and therefore a written buyer agreement would not be necessary unless required by state law. *(Added 8/8/24)*

105. If a transaction broker is facilitating the transaction for both the seller and the buyer, is a written buyer agreement required prior to touring a home?

- Yes. The MLS Participant is working with the buyer (and the seller), so a written buyer agreement is required. *(Added 8/8/24)*

106. Do the practice changes affect any state disclosure requirements for transaction brokers?

- No. You must still comply with state and local legal requirements. MLS policies and rules are always subject to state and local laws and regulations. *(Added 8/8/24)*

Commercial Non-Residential Listings

107. What do these practice changes mean for commercial practitioners?

- The proposed settlement agreement—like the Sitzler-Burnett lawsuit and the copycat lawsuits—is focused on residential real estate transactions. That means most commercial transactions will not be affected.

- In many markets, commercial listings appear in commercial information exchanges (CIEs) and not multiple listing services (MLSs), and do not include an offer of compensation.
The settlement prohibits offers of compensation on an MLS and requires MLS Participants working with buyers to enter into written agreements with their buyers. These practice changes will go into effect August 17, 2024.

108. Are commercial listing services that don't pull from an MLS subject to the practice change prohibiting offers of compensation on an MLS?

- No. That practice change prohibits offers of compensation on an MLS and it prohibits MLSs from allowing third parties to use MLS data to facilitate a platform for multiple brokerages to make offers of compensation.

109. Does the requirement to use a written agreement before showings apply to commercial transactions?

- No. The settlement and the practice changes it requires are focused on residential transactions, not commercial transactions, or leases.

110. If a commercial broker who is a REALTOR® has access to an MLS, but is showing a property on CIE or another platform that is not associated with an MLS, does the requirement to use a written agreement apply for that property?

- No. The settlement and the practice changes it requires are focused on residential transactions, not commercial transactions, or leases.

Financing

111. What are interested party contributions?

- Fannie Mae, Freddie Mac, and the FHA specify limits on how much a seller or broker can contribute to the buyer to pay for services typically paid by the buyer. These payments are called interested party contributions (IPCs).

112. Is compensation paid by a seller or listing broker to a buyer broker considered an IPC?

- No. Cooperative compensation is considered a fee that is "customarily" or "traditionally" paid by the seller. The FHA, Fannie Mae, and Freddie Mac exclude these types of fees from the IPC calculation.

113. Does the NAR settlement change that? Is compensation paid by a seller or listing broker to a buyer broker now an IPC?

- The settlement would preserve the choices consumers have regarding real estate services and compensation. After the new rule goes into effect, on August 17, 2024, listing brokers and sellers can continue to offer compensation for buyer broker services, but communicating such offers is prohibited on an MLS.
- Based on our interpretation of current guidance from Fannie Mae, Freddie Mac, and the FHA, we do not expect compensation paid by a seller or listing broker to a buyer broker to become an IPC.

NAR OPERATIONS

114. How will NAR fund the settlement?

- One of the critical advantages of this agreement is that NAR would be able to pay the settlement amount over time.
- We will determine how to allocate funds as they become due, working closely with our Finance Committee.

115. How does this settlement change NAR’s value proposition? Why should real estate professionals continue to be NAR members after this news?

- We are confident that this agreement provides a path for NAR to move forward and continue our work to preserve, protect, and advance the right to real property for all.
- NAR fought to include all members in the release and was able to ensure more than one million members were included.
- We continue to deliver unparalleled value to, and advocacy on behalf of, REALTORS®, including through our learning opportunities and resources, research, and member tools.

116. Who at NAR signed off on the settlement and was the decision to settle subject to proper NAR governance procedures?

- The settlement was signed off by NAR’s Leadership Team, in consultation with outside legal and financial experts, and in accordance with NAR’s governance procedures.
- Throughout the settlement process, we engaged with a diverse range of members and considered their perspectives and interests while fighting to protect all industry players as best we could.
- As is common in negotiating a complex settlement, there is a need to maintain confidentiality and effectively navigate complex legal considerations, which restricted the extent of the information that NAR could share more broadly.

117. Why is NAR paying more to settle than the corporate defendants did?

- This settlement was heavily negotiated and is based on NAR’s ability to pay.
- NAR has secured a release of liability for over one million NAR members, all state/territorial and local REALTOR® associations, all REALTOR® MLSs, and all brokerages with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below.
- There are strong grounds for the court to approve this settlement because it is in the best interests of all parties and class members. *(Updated 9/5/24)*

118. Does the settlement affect NAR’s ability to continue operating?

- We are confident that this agreement provides a path for us to move forward and continue our work to preserve, protect, and advance the right to real property for all.
- The settlement amount is a substantial sum, and it will be incumbent on NAR to use our remaining resources in the most effective way possible to continue delivering on our core mission.
- The Finance Committee and Strategic Planning Committee will remain critical in reviewing and providing guidance about NAR’s operating budget to help ensure we will continue to deliver unparalleled value to and advocacy on behalf of REALTORS®, including through our learning opportunities and resources, research, and member tools.

119. Can NAR use reserves to pay for the settlement? If so, how much?

- This settlement was heavily negotiated, and the amount is based on NAR’s ability to pay.

- One of the critical advantages of this agreement is that NAR would be able to pay the settlement amount over time.
- We will determine how to allocate funds as they become due, working closely with our Finance Committee.

120. Will there still be funds available for NAR's advocacy efforts?

- One of the critical advantages of this agreement is that NAR would be able to pay the settlement amount over time.
- The settlement amount is a substantial sum, and it will be incumbent on NAR to use our remaining resources in the most effective way possible to continue delivering on our core mission.
- The Finance Committee and Strategic Planning Committee will remain critical in reviewing and providing guidance about NAR's operating budget to help ensure we will continue to deliver unparalleled value to, and advocacy on behalf of, REALTORS®, including through our learning opportunities and resources, research, and member tools. *(Updated 9/5/24)*

121. Will NAR raise dues or levy an assessment on members to fund the settlement?

- NAR will not change membership dues for 2024 or 2025 because of this payment.